

**DECLARATION OF PAUL FLANAGAN**

I, Paul Flanagan, under 28 U.S.C. § 1746, declare:

1. I am a Compliance Investigator with the Compliance and Investigations Division, Office of Investigation, Enforcement and Audit, Food Safety and Inspection Service (FSIS). FSIS is a public health agency within the United States Department of Agriculture (USDA). I have been a USDA FSIS employee since July 1992, and have held my current position since October 2004. Currently, I am assigned to FSIS' Philadelphia Compliance Sub-Office, Northeast Region.

2. This declaration supports the United States' February 27, 2020 Brief in Opposition to Miller's Food Coalition, U.A.'s motion seeking to intervene in *United States of America v. Miller's Organic Farm and Amos Miller*, EDPA Action No. 19-cv-1435.

3. I base this declaration on: (a) my personal knowledge and experience; (b) information that I received orally or in writing during the course of my investigation of Miller's Organic Farm ("Miller's") and my interactions with Miller's owner, Amos Miller; (c) Miller's Organic Farm's Rule 30(b)(6) deposition, and Amos Miller's deposition, in September 2019 in EDPA Action No. 19-cv-1435; and (d) other sources of information that I obtained during the course of my investigation, including by accessing Miller's Organic Farm's and Amos Miller Organic Farm's public websites.

4. My official duties include, though they are not limited to, conducting periodic in-person "verification reviews" of meat and poultry facilities. These aim to assess compliance with sanitation, facility, recordkeeping, labeling, and other requirements under the Federal Meat Inspection Act, as amended, 21 U.S.C. § 601, *et seq.* ("Meat Act"), the Poultry Products Inspection Act, as amended, 21 U.S.C. § 451, *et seq.* ("Poultry Act"), and related regulations. I

conduct these at a variety of facilities, including “custom-exempt” facilities, warehouses, distribution centers, retail stores, and other facilities that slaughter livestock and/or handle, store, or distribute meat food and poultry products.

5. According to Amos Miller’s September 2019 deposition testimony (on his own behalf and on behalf of his farm business), among the nationwide food Co-ops that, at least until the Court’s injunction order, were able to place orders for Miller’s Organic Farm’s meat food and poultry products on behalf of individuals who are both Co-op members and Miller’s members are: (a) a Co-op named Pastured Farm Food Club (<https://www.pasturedfarmfoodclub.com/>) that Anke Meyn coordinates in West Palm Beach, Florida; and (b) a co-op named My Healthy Food Club (<https://www.myhealthyfoodclub.com/>) that Nicki Adamkova coordinates in Miami, Florida. Ms. Meyn operates the Amos Miller Organic Farm website at <https://www.amosmillerorganicfarm.com/>. At least until the injunction order, her Co-op members were able to place internet and/or email orders for Miller’s products through that site. Ms. Adamkova operates the Miller’s Organic Farm website at <https://www.millersorganicfarm.com/>. At least until the injunction order, her Co-op members were able to place internet and/or email orders for Miller’s products through that site. At least until the injunction order, delivery of Miller’s meat food and poultry products to these Co-op/Miller’s members was by Miller’s-arranged or Co-op-arranged refrigerated truck, UPS delivery, and/or FedEx delivery. Moreover, at least until the injunction order, Miller’s Organic Farm’s members could order Miller’s meat and poultry products by internet even if they were not members of participating Co-ops. They could do so through the FarmMatch website at <https://www.farmmatch.com/millersorganicfarm/locations>, which is operated by Max Kane of Wisconsin. FarmMatch had

been allowing delivery of Miller's orders to pick-up locations in Massachusetts, Georgia, North Carolina, and Arizona.

6. Since April 2016, I have regularly viewed Miller's public websites, including its Facebook page. On certain of these sites, monthly (and sometimes more frequent) newsletters to Miller's Private Membership Association members often appear, with messages from Amos Miller to his buyers' club members. These newsletters frequently contain "legal updates" from Mr. Miller to Miller's members that provide Mr. Miller's perspective on enforcement litigation in the Eastern District of Pennsylvania before the Honorable Edward G. Smith. At his September 2019 deposition on behalf of Miller's Organic Farm, Mr. Miller testified that he sends these newsletter updates to a secretary in western Pennsylvania, who proofreads and prepares them for posting on the internet.

7. In his June 2019 newsletter to Miller's members, for example, which I accessed on one of the Miller's sites and attach in part, Mr. Miller wrote:

The USDA . . . is wanting Miller's . . . to comply with their rules & regulations. . . . [W]e feel that with the number of animals that we do here, it would not be very effective to set up with USDA licensing here at the farm. We have considered taking our animals to a USDA licensed facility . . . but going to a USDA facility can have its challenges. For one, we will not be able to have all our so-called hard to find important parts of the animal such as glands, etc. These facilities either don't have time for it or have to go through special paperwork to keep them. Also, the normal procedure is to preserve the animal carcasses while hanging or aging beef. **They usually put preservatives such as citric acid or other type of preserving agents on the meats. As a member has mentioned we are very sensitive to any kind of chemicals, etc., so how can we tolerate that kind of procedure?** Miller's . . . needs your opinion to help us decide how we should perform. Please fill out the attached survey so we can perform accordingly. As we all know, we all could have different opinions how this procedure should be handled, but I think we all have the same thing in mind and that is to have access to grassfed, nutrient-dense foods. We at Miller's Organic Farm try our very best to keep it

available. If you feel moved to fill out our survey that is attached that would be appreciated. . . . Please note: this survey is for Miller's Organic Farm only.

See Exhibit "1" hereto (bold added).

8. On information and belief, Mr. Miller sent a legal update to his members in July 2019, which stated:

The good news is **we have team members researching options on how to exercise our freedom of choice of chemical-free, nutrient-dense foods.** We also have a few licensed attorneys coming on board to give us ideas how to handle this situation. Both of them have a great passion for fresh foods right off the farm and have handled various cases on helping farmers with legal advice. But as you may know, their services come at a cost. Many of our members have asked how they can help and we greatly appreciate that offer. Making a donation to the farm to help cover some of our legal issues would be very helpful. We want to do our very best to only make wise choices so your donation gets used wisely. **The time may come where we might need some of your voices heard at court of why you would need to have access to nutrient-dense foods. We will let you know if the time comes.**

9. Mr. Miller's December 5, 2019 "legal Update" to his members, which I accessed on one of the Miller's sites and attach, included the following:

[U]ntil we are able to work out the details of the custom exemption, according to the court order, they are coming very likely with full force. In 60 days, which would be around the middle of January, they would have the right to seize all meat inventory or fine Miller's Organic Farm for selling meat products. This is a great concern to us because we know how many of our members depend on our chemical-free, citric acid-free, preservative-free meats. Many of our members have come to us as their meat supply for this reason. **We feel it could be time for our members to take action to preserve their right to their food source to fill their needs.** Quite a few of our members are battling with their health including children that have allergies, etc. **The illnesses that we have among us do not seem to get less. Very likely it is because of the manufactured citric acid (see link attached for the preservatives that are allowed as safe under USDA code).** They do not need to be on their federally approved food labels. **If every food that we consume that day has just a**

**tiny amount of preservation in it, by the end of the day, this can be amazing to our specially designed human bodies. . . .**

So now the time is coming where USDA is forcing us to discontinue our service to you in selling small portions of meat to those who cannot afford or have freezer space to store a quarter of beef which is approximately 100 pounds of meat & bones. So, **does this mean you will be forced to eat MCA (manufactured citric acid) meats? This could be an infringement on your 1st Amendment right.** As a business or corporation, we could be another set of rules, but **you as individuals can claim all those amendment rights.** They have the same meaning today as they had the day they were written, which I am ever so grateful for, that our country has those valuable documents in place so we can sustain our lives and beliefs as we travel life's journey. **Very likely the time has come where we need to exercise them more. The claim that USDA/FSIS makes is that they are doing all this regulatory enforcement action to protect the public, but the time has come where individuals find it hard to believe with all the approved preservatives & GMO's that are being allowed in the food supply.** (see links for "Why GMO's are not the answer" & "Lawsuit filed: Monsanto Roundup Kills Gut Bacteria") Is it any wonder why our members have signed our agreement? Just like the saying goes – Trust has to be earned. I do not want to make it sound like I'm all against government officials. Not at all! We do need government, but when they favor big corporations over individual's freedom of choice to nutrient-dense foods, **I do feel there is an issue at hand that the argument can be made on the 1st Amendment.** Just because the foods have been approved by the USDA, does that mean it is safe? Very likely not with all the recalls that are taking place nowadays.

**So, what issue do we have at hand here?** Just like when an individual has a health issue and an extensive treatment needs to take place such as chemo treatments, etc., do they need a signature from the individual so they can move forward with the procedure? **Why couldn't we as individuals have the right to sign our signature to have access to what our beliefs are is nutrient-dense foods to sustain our health?**

See Exhibit "2" hereto (currently located at <https://www.amosmillerorganicfarm.com/legal-updates/>) (bold added).

10. On information and belief, Mr. Miller sent an update to his members approximately three weeks after the Court's November 19, 2019 Injunction Order, on or about December 12, 2019, which stated:

As you may know, the USDA FSIS (a government agency) has found their way to our farm. The excellent news is that our members have created a coalition now called "**Miller's Food Coalition**". The coalition **was created to help our members to have access to our citric acid free—or free of any other preservative—grass-fed meats**. The coalition has decided that it is time to take action to preserve your rights to choose healthy food. They would like all of our members to join in on a letter-writing campaign to the USDA FSIS officials. The coalition has enclosed a survey (draft letter) to assist you in this important food movement. You can either send your letter directly to USDA FSIS, or the coalition can send it for you. **If you decide to send your letter directly to USDA FSIS, please send a copy to the coalition to support the filing any legal actions the coalition and attorneys decide to take. When writing your letter, please feel free to write from the bottom of your heart. Consider including your reasons for buying meat from Miller's Organic Farm, especially noting that you rely on meats from Miller's Organic Farm to address your medical condition. A statement that your medical condition (whether physical or mental) improved because you were free to buy meat from Miller's Organic Farm is particularly useful, if this is true for you.** Feel free to ask the USDA FSIS questions such as: 1) is there any other source like Miller's Organic Farm available to meet your needs; 2) why you can't have the rights of freedom of choice to buy right off the farm; or 3) if they are here to protect the public, why they allow GMO (genetically modified organism) foods. Feel free to ask for a quick response within a given number of days. If they fail to respond, how could their actions of seizing meats from Miller's Organic Farm be justified? Please join in on the letter-writing campaign. **Please click here for a template letter and mailing addresses for sending your letter to the USDA FSIS. Please contact or send email to the Miller's Food Coalition to be included in further action against the USDA FSIS.** We have two attorneys aboard to represent the coalition in this worthy effort. There is no membership fee to join the coalition. (Bold added.)

11. On information and belief, Mr. Miller, in a January 2020 newsletter to his members, stated:

The good news is that our members have worked together and created "Miller's Food Coalition". This is to preserve your rights to have access to nutrient-dense foods. We all know this is very important to all of us, especially the times we are in with USDA pushing for more GMO's in our food supply and also allowing more unnatural ingredients in the organic food supply. Even the manufactured citric acid, to my knowledge, is allowed in the organic food supply and doesn't even have to be on the label. Is this the reason our members like to get direct from the farm, like the saying goes Know the farmer, know your food? . . . They already put one buying club in Tennessee out of existence and will very likely continue that mission until the food consumers come together and say this shall not be. The raw milk movement was in this situation approximately 6-8 years ago till a group of moms got together and stood up for what their important needs are to sustain their children's livelihoods. As the saying goes, No Farmers No Foods. **Let's stand together to protect our rights to choose healthy foods.** It only takes a very small percentage of the population to get this mission accomplished. United we stand, divided we fall. **Your** ideas, suggestions and **testimonies are very important at this time.** They have a few attorneys involved that have a great passion to help reserve your food rights. . . . **Please email your letter today, if possible, to the coalition.** Their current email address for the coalition is: [coalition@amosmillerorganicfarm.com](mailto:coalition@amosmillerorganicfarm.com) The email address for the USDA FSIS is: [fsis.webmaster@usda.gov](mailto:fsis.webmaster@usda.gov) (Bold added.)

12. On information and belief, Mr. Miller further wrote, in a "mid-month newsletter" to his members on or about January 24, 2020:

Many of our members have come together and created a coalition called Miller's Food Coalition. . . . We appreciate the many responses we got from our members regarding the legal issue survey document that was sent out in December. We greatly appreciate your efforts & support in this. **Many of our members have called here at the farm especially since they found out that our farm is under court order not to distribute certain kinds of meats, fresh or frozen. USDA says under the court order it is strictly forbidden, and if the farm continues slaughtering or distributing certain meats the farm will be heavily penalized. See the linked message from Miller's Food Coalition for more details.** Again, many of our members have called this week to see what they can do to help and have also asked if it is still time to fill out the legal issue survey document which we have attached here. Our answer is yes indeed there is

still time. **Your comments & opinions are what will help us through these issues. We recommend not just filling out the survey, but also attaching a letter to it that explains about your experience with our special foods such as why you get food from our farm and that it is hard or impossible to find elsewhere. Also, if you feel moved to write about your health conditions, etc. and why and how much you depend on our food source, etc. That would be extremely helpful.** If you already sent in your survey document and have not attached a letter to it, there is still time for that as well. Just attach a note (revised survey document). We will do our best to attach it to your survey. Please click on the highlighted text for a message from Miller's Food Coalition for more details. Again, your letters are what will help us through these issues. (Bold added)

13. That January 24, 2020 newsletter provided a link to the following "To Whom It May Concern" form letter:

[Please check all that apply]

     **We require that The Court Order that is against the Miller Organic Farm to be dropped or not enforced until USDA FSIS has agreed to accept the Custom Exemption Plan that the Farm provided to USDA FSIS, and until the Farm has had a reasonable amount of time to implement the Custom Exemption Plan with the members.** Miller Organic Farm has previously offered a Custom Exemption Plan to the USDA FSIS that was subsequently denied.

     **I, as a member, need to have access to Miller Organic Farm special meats at all times to fulfill my special needs in nutrient-dense foods, in order to address a medical problem and/or sustain my health. By not having access to these special meats, I may suffer irreparable harm,** and believe that refusing my free access to these foods could be viewed as an infringement on my Constitutional Rights granted in the 1st and other Amendments.

     I can stock my freezer with Miller Organic Farm inventory for only a few months. Please do not delay the Custom Exemption Plan approval for our Private Membership Association. The meats are very important to address a medical problem and/or sustain my health.



\_\_\_ I need to have access to fresh—not frozen—meat at all times according to Miller Organic Farm practices to help sustain my health. Seizing our fresh meat is an infringement of my Constitutional Rights granted in the Bill of Rights and other amendments.

\_\_\_ I do not have freezer space to stock Miller Organic Farm meat inventory for more than a few weeks, neither does my budget allow me to make this food advance purchase. I need to have access to Miller Organic Farm meats at all times to address a medical problem and/or sustain my health.

\_\_\_ [Add your specifics, such as a medical condition that has improved as a result of your use of food from Miller’s Organic Farm.] (Bold added.)

14. The January 24, 2020 newsletter also contained a separate link to this “message from Miller’s Food Coalition”:

As you have been told in Amos Miller’s newsletters over the past few months, the United States Department of Agriculture (USDA) has prevailed in their case against Amos Miller and his farm. The Court Order issued by Judge Edward G. Smith, United States District Court for the Eastern District of Pennsylvania on November 19, 2019, 1) provided Amos and his farm just sixty (60) days to liquidate his existing stock of meat (bovine) products, swine products, and poultry products; 2) prohibits Amos and his farm from slaughtering meat, swine or poultry after November 19, 2019, except for his limited personal use; 3) requires that all inventory remaining after the close of the sixty (60) day period that has not been liquidated is to be detained, seized or otherwise appropriately dispositioned by the USDA; and 4) requires Amos and his farm to enter into a custom slaughter exemption agreement with the USDA before the slaughter of meat, swine or poultry can resume. The sixty (60) day period ended Saturday, January 18, 2020. The not-so-pleasant news is that Amos can no longer sell meat, swine or poultry, nor can he slaughter the same, until such time that a custom slaughter exemption plan has been accepted by both the USDA and Amos Miller.

In the meantime, the Miller’s Food Coalition has secured legal representation on behalf of all private association and buying club members to argue our case before Judge Smith, beginning this week. **Your letters and affidavits will be key exhibits in our legal argument to demonstrate to the Court and USDA that the**

**regulations under which all Americans are forced to process, sell and buy their meats and poultry arguably put the buying public—especially you, the customers of Amos Miller’s Organic Farm—at risk of deteriorating health, increased disease, and exposure to toxic chemicals, all leading to possibly irreparable harm and even premature death.**

**We fully expect to prosecute this case to a decision within a few weeks which stays the Court Order for a longer period of time, allowing Amos Miller and his farm to again ship from inventory while Amos and his farm pursue a custom slaughter exemption plan that satisfies his customers as well as the requirements of the USDA. Anticipating a favorable decision, you may resume your orders for meat and poultry products soon. In the meantime, your orders will be placed in backlog unless you advise otherwise.**

**In addition, Amos and I want to encourage the fresh, not frozen, raw meat customers to send separate letters that 1) Identify the diagnosis of their disease state, as stated by their physician, 2) Discuss the symptoms and their effects on health, 3) Identify the improvements noted when a raw meat diet supported by Amos Miller is followed, and 4) Confirm a marked improvement in health, as observed by their physician. We need your timely response in order to enter evidence in the court proceedings to support your need for raw meats. As noted in the attached message, your support is critical in our fight FOR YOUR BENEFIT! Those who respond with letters should email them directly to me at [tom.c.steidel@gmail.com](mailto:tom.c.steidel@gmail.com). I will, in turn, send them affidavits that must be completed and notarized to submit to the court in this case.**

We recognize the hardships this will cause many of Amos Miller’s customers, and the questions and confusion that may yet remain with you after you read this letter. Until our very own website is launched (<https://www.millersfoodcoalition.com>), we will be happy to answer your questions as quickly as we can. Please appreciate that our legal expenses are mounting very quickly, and we have no source of income at this time. When the website is launched, we will let you know. On the website, you will be invited to join the Coalition, at no expense whatsoever, and to donate to help our unincorporated non-profit association pay our legal expenses. If you would like to help us out financially with our legal expenses, please click on the highlighted text: <https://www.gofundme.com/f/help-amos-miller-save-his-traditional-farm> If you have questions that cannot wait, feel free to

send an email to [info@millersfoodcoalition.com](mailto:info@millersfoodcoalition.com), or call me directly, at (443) 844-4084.

Respectfully, Tom Steidel (Bold added).

15. On information and belief, Miller's Food Coalition, U.A.'s President, Thomas Steidel, works for Faust Associates, where he counsels and trains companies in areas of federal contracting and compliance.

16. Although Miller's holds itself out as an "Organic" farm, it has not been producing its meat food or poultry products under USDA's Agricultural Marketing Service's National Organic Program and is not listed as a certified organic farm or business on AMS's website. *See* 7 C.F.R. Part 205; 7 C.F.R. § 205.300(a) (the term "organic" may be used only for products "produced and handled in accordance with the regulations in this part"); <http://organic.ams.usda.gov/integrity/>.

17. USDA FSIS does not require federally inspected meat and poultry slaughtering and processing establishments to use citric acid as an antimicrobial wash/spray in their slaughter and processing operations, and many establishments do not use it for that purpose. Such establishments may choose to, and often do, rely on antimicrobial wash/sprays other than citric acid or different methods, such as a steam-vacuum system, to control biological hazards.

18. If a federally inspected establishment chooses to use citric acid as an antimicrobial spray, the establishment is typically doing so to control biological hazards (pathogens) that have been identified in the establishment's hazard analysis as reasonably likely to occur. *See generally* 9 C.F.R. § 417.2(a) (requiring that every official establishment must conduct a hazard analysis to determine the food safety hazards reasonably likely to occur in the production process and to identify the preventive measures the establishment can apply to control those hazards).

19. FSIS disagrees with Miller's Food Coalition, U.A.'s position that citric acid is unsafe. In fact, citric acid, a naturally occurring, widely used organic acid derived from lemon or pineapple juice, is listed in FDA's regulations, at 21 C.F.R. Part 184.1033, as "Generally Recognized as Safe" (GRAS). Citric acid is thus allowed in food with no limitation other than good manufacturing practice. Citric acid and lactic acid are also permitted in or on processed products that are labeled as "organic." *See* 7 C.F.R. § 205.605.

20. To date, neither Amos Miller nor Miller's Organic Farm has contacted FSIS' Philadelphia District Office to apply for a grant of Federal inspection.

21. During the course of this litigation, before the Court's November 19, 2019 Injunction Order, Amos Miller, through counsel, submitted to the government a rough outline of a proposal for a reorganization of Miller's Organic Farm's meat and poultry business in an effort to fit within a "custom" exemption to federal inspection requirements under the Meat and Poultry Acts. In response, FSIS stressed to Mr. Miller that: USDA FSIS has never granted such a custom exemption for similarly structured operations; and the custom operations business model that he proposed is a non-starter for FSIS because such high-volume, nationwide operations, as proposed, would be contrary to the plain language, intention, and spirit of the relevant custom-exemption provisions of the Meat and Poultry Acts and their regulations.

I declare, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct to the best of my knowledge.

Executed on this 27<sup>th</sup> day of February, 2020.

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Investigator Paul Flanagan  
Compliance and Investigations Division  
Office of Investigation, Enforcement and Audit  
Food Safety and Inspection Service  
United States Department of Agriculture